

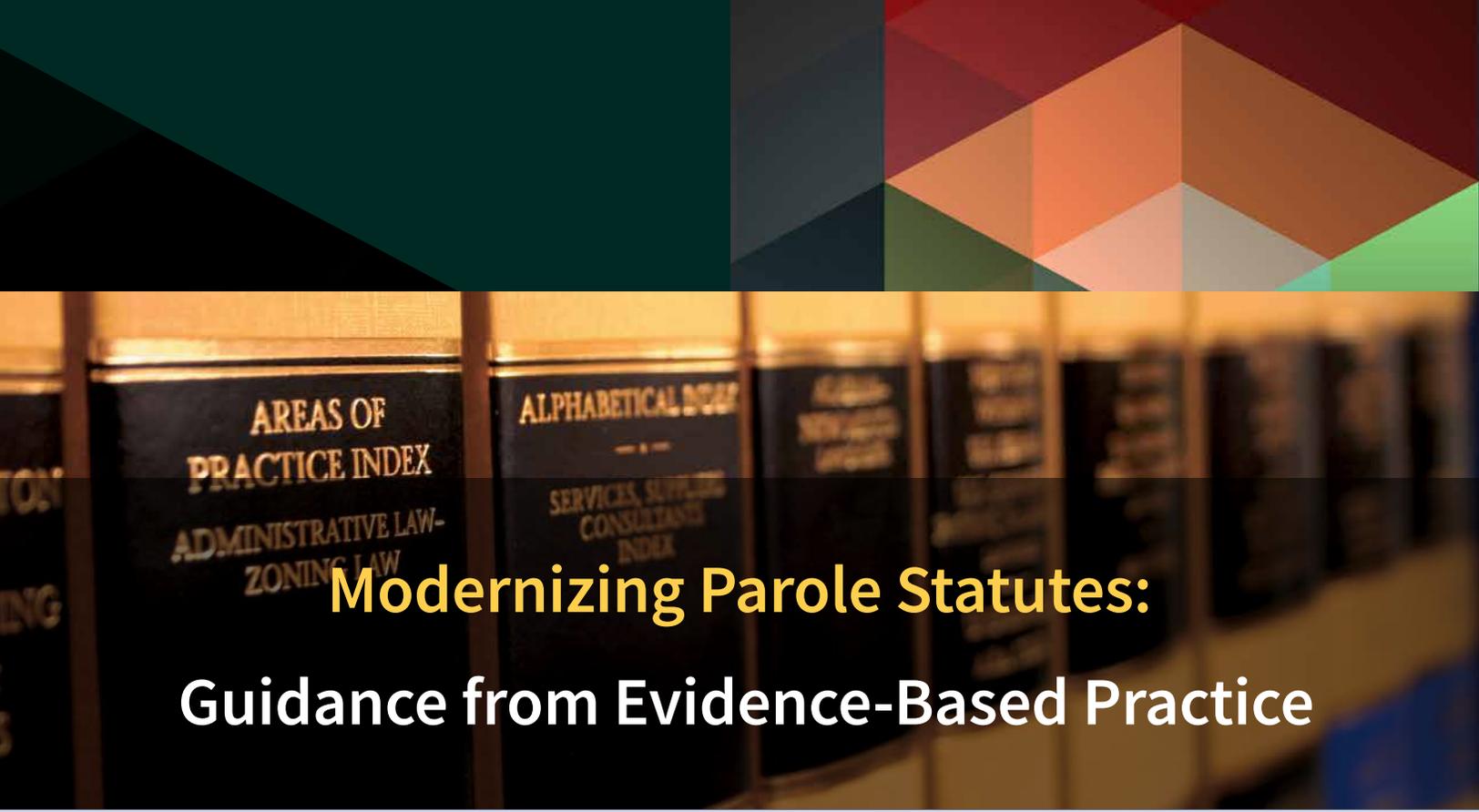
UNIVERSITY OF MINNESOTA

MODERNIZING PAROLE STATUTES: Guidance from Evidence-Based Practice

A publication by the Robina Institute of Criminal Law and Criminal Justice



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE



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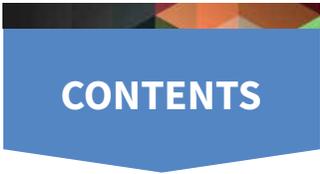
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CONTENTS

Introduction 5

I. Release 6

 A. Timing..... 6

 B. Decisions 7

 C. Victims..... 8

 D. Process 9

II. Supervision 11

 A. Conditions 11

 B. Credit..... 12

 C. Terms..... 13

 D. Sanctions and Incentives..... 14

III. Organization..... 15

 A. Appointment 15

 B. Qualifications 16

 C. Mission..... 16

 D. Transparency..... 17

IV. Conclusion 19

Appendix A: Key Resources for Releasing Authorities 20

ABOUT THE PAROLE RELEASE AND REVOCATION PROJECT

The Parole Release and Revocation Project of the Robina Institute of Criminal Law and Criminal Justice is committed to engaging releasing authorities in both indeterminate and determinate sentencing states in examining all aspects of the discretionary parole release and post-release violations process. A central goal of this project is to contribute to the enhancement of decision-making at every stage. To accomplish this goal, the Parole Release and Revocation Project partners with select jurisdictions on issues related to parole release decision-making; researches and publishes legal and statutory state parole profiles; and publishes survey and other findings focusing on releasing authorities.



The Robina Institute of Criminal Law and Criminal Justice is located at the University of Minnesota Law School. The Robina Institute connects research and education with practice to create transformative change in sentencing laws and correctional policies.

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INTRODUCTION

Nearly one million people are released or supervised under conditions established by state paroling authorities each year. The appointed members of those paroling authorities determine whether and when individuals are released from prison, how they are supervised post-release, and the punishment (including reincarceration) they may face for violating the conditions of their supervision. The power over an individual's liberty exercised by paroling authorities is vast, in some respects as much as sitting felony sentencing judges, more in some jurisdictions.¹ How paroling authorities carry out their responsibilities matters to those sentenced, their families and their victims at the individual case level, as well as in the aggregate through the collective impact these decisions have on the key goals of managing criminal justice system costs, reducing recidivism and increasing public safety.

Research has grown on what works relative to evidence-based practice. Paroling authorities are increasingly working to apply this research to the policies and tools driving the parole release and supervision function. Their efforts have been supported and nurtured by such organizations as the National Institute of Corrections (NIC), the National Parole Resource Center (NPRC), the Bureau of Justice Assistance (BJA), and The Council of State Governments (CSG) Justice Center. Although states have made considerable progress in incorporating evidence-based practices in parole board decision making, many paroling authorities still operate under state laws that have not been amended in decades. Paroling authorities often find their new practices require that the statutory requirements need to be modernized, either because they directly conflict with evidence-based practices, or they do not support efforts to ensure parole decisions and supervision practices are rooted in what the research says works.²

This paper offers broadly crafted recommendations for legislation to serve as a starting place for those states and paroling authorities interested in modernizing parole laws around three core areas: the parole decision-making process, the terms and conditions of supervision post-release, and the administration of the paroling authority itself.³ The proposals are designed to support the continuing transition of paroling authorities to effective, evidence-based organizations. In several instances, sound or best practices formed the basis of the recommendations in this paper, drawing from published works and advocacy efforts undertaken by organizations committed to parole reform (see Appendix A: Key Resources for Releasing Authorities).

To determine how best to apply these ideas to a particular jurisdiction's sentencing and parole statutory context, ideally, a state working group should be formed. Its membership might include the paroling authority chair, the head of corrections, key legislators and their staff, and representatives of the office of the governor and the judicial branch, prosecutors, public defenders, victims and their advocates. Their task should start by reviewing existing law, understanding the research (what it shows and its limitations), and then drawing on the recommendations to decide which areas of statute merit revision.

The recommendations are noted and discussed in the sections that follow. They are intended to be aspirational, serving as a guide to what could be included in (and removed from) state law. They are not presented nor intended to serve as "model legislation." State working groups will need to determine how quickly, and to what extent, their statutes are in need of modernization and which ideas should be incorporated into statutes, rules, and policies.

I. RELEASE

A. Timing

Recommendations

- Within the limits of the state’s sentencing structure, assign the sentencing judge the responsibility for determining the appropriate length of the minimum sentence to fulfill the punishment or retributive goal in sentencing.
- Make the paroling authority responsible for determining readiness for release once the minimum sentence is served; in other words, restrict the paroling authority’s ability to deny parole by relying on the often-stated rationale that granting release would depreciate the seriousness of the crime.
- Limit the period between parole denial and parole reconsideration to the time required for the person to complete any needed programming or behavioral reform. Reconsideration should occur within one year of parole denial, except in instances when someone has a very long sentence or there are extraordinary circumstances.
- Require supervised release of individuals who are not paroled to ensure a period of supported reentry prior to the discharge of the sentence.

Discussion

The release decision is the most visible and critical function of the paroling authority. Release timing typically depends on how the minimum and maximum sentencing requirements are constructed under state law. The paroling authority usually has the authority to release someone after he or she has served the minimum sentence, and up to the point when the person reaches the maximum (when the sentence is “discharged”).

Among others, Peggy Burke, referencing the work of Norval Morris, argues for a system of “balanced justice,” tied to “limiting retributivism.”⁴ This means that the sentencing judge establishes the minimum sentence of incarceration required for retribution. During the period after correctional and paroling authorities use their discretion to pursue the goals of rehabilitation and reentry, under the assumption that the requi-

site period of confinement and thus the limits of retribution or the appropriate dosage of punishment have been satisfied.⁵

It is a major paradigm shift for the paroling authority, policymakers, and the public to recognize that the paroling authority is not well-equipped, and should not be empowered, to revisit whether the retributive concerns considered by the court have been met. The paroling authority is, however, well-suited to decide when the sentencing goals of reduced risk, adequate preparation, and demonstrated readiness for release are achieved. Those considerations should come into play during the minimum sentence (“retributive”) period, thereby providing individuals the opportunity to be ready for release upon its completion.

Release timing relates to the evidence-based “risk principle” of targeting and matching the intensity of interventions to a person’s risk level in order to reduce recidivism.⁶ Prior to reaching the minimum sentence, the individual should be assessed for risk and needs, and those issues that are identified should be addressed through appropriate programs to prepare the person for release. The NPRC’s (2013) *Practice Target #5* urges parole boards to “use their influence and leverage to target institutional and community resources” for medium- and high-risk individuals to address their criminogenic needs for release readiness, while *Practice Target #6* directs boards to consider low-risk individuals for release “at the earliest stage possible—in light of statutes and other sentencing interests.” Release consideration at initial parole eligibility should also be extended to those imprisoned for less serious drug and property offenses, some of whom may be at a higher risk to reoffend than people convicted of more serious offenses, but who are determined to be a manageable risk under community supervision.

Some individuals will be denied parole or “set off” upon initial consideration. This decision should not be made to increase the period of punishment, but rather to afford the person a defined opportunity to demonstrate achievements or changes in behavior that will increase

his or her release readiness. Accordingly, those for whom parole is denied should not be set off for an extended period of time—typically no more than one year.

Some individuals will not be paroled before they reach the maximum sentence, at which point their sentence is discharged without any post-release supervision. Paroling authorities should ensure that most persons are released before this time so that they will receive a period of supervision. Studies show that individuals are most likely to reoffend in the period immediately following incarceration.⁷ Even for low-risk individuals who require or need very limited supervision, a short period of supervision may be used to attend to the basic transitional needs common to most releases, such as housing, treatment referrals, employment, and transportation.

B. Decisions

Recommendations

- Require the use of parole guidelines that incorporate a risk and needs assessment, ensure weighted factors are consistently applied in all cases, and require periodic evaluation of the parole guidelines and assessment tool(s). Require evidence-based risk and release readiness factors to be considered in all parole decisions, including a validated risk and needs assessment score, engagement in risk-reducing programs and treatment, and in-prison behavior.
- Require the legal standard for parole release to explicitly support the use of presumptive parole guidelines that incorporate a risk and needs assessment. The legal standard should anticipate the release of individuals when there is a reasonable probability, based on the risk assessment and indicators of release readiness, that they can be managed under parole supervision and successfully reintegrate into the community.
- Eliminate conflicting directions within parole statutes that require the paroling authority to consider factors not related to risk and readiness, specifically instances when the paroling authority is expected to take a retributive approach. Other case-specific criteria may need to be considered as potential overriding factors or in relation to release planning, including input from victims and other stakeholders, and considerations that may affect the timing and conditions of release.
- Require paroling authorities to collaborate with institutional corrections to agree on the risk-reduction requirements for parole and to develop reentry plans that support timely release. Require that risk-reduction programming, treatment, and reentry planning be completed by the time of a person's initial parole eligibility, or be completed in the community upon release.
- Establish legislative intent to prioritize finite prison space for individuals convicted of the most serious predatory offenses, and otherwise to prepare individuals for release at their minimum parole eligibility, absent compelling circumstances to hold them beyond this time.

Discussion

Over the last two decades, robust research has led to the emergence of evidence-based principles and practices, such as assessing risk and targeting and matching the intensity of interventions to a person's risk level to reduce recidivism. Evidence-based decision making is supported by two practices outlined by the NPRC (2013): paroling authorities should “develop and use clear, evidence-based, policy-driven decision-making practices and tools that reflect the full range of a paroling authority's concerns (e.g., punishment, victim issues, community safety)” (*Practice Target #2*), and they should “use good, empirically-based, actuarial tools to assess risks and criminogenic needs” (*Practice Target #1*).⁸

Using “risk-based” guidelines to strengthen parole decision making has been recognized as an effective practice in the field for more than a decade.⁹ Parole guidelines that incorporate the results of a risk and needs assessment help to define and quantify decision-making factors. This, in turn, fosters fairness and consistency in decision making across cases and decision makers.

In the pre-evidence-based era, paroling authorities' approach to decision making did not take these principles and practices into account. More recently, many paroling authorities have become acquainted with these principles and practices, and the benefits that accrue when agencies and decision makers adopt them. Through the NIC, paroling authorities now have access to training in evidence-based practices. Technical assistance is available through a variety of federally sponsored initiatives¹⁰ and organizations¹¹ to guide

the transition to using these practices. While some paroling authorities have enthusiastically welcomed this era of change, others have struggled to make the transition. This suggests a lack of confidence or a clear understanding of the rationale for a policy-driven, structured, research-based, decision-making model. Strengthening parole statutory requirements with references to evidence-based strategies will facilitate this transition.

One reason some paroling authorities have not fully embraced this transition is because there is no statutory direction to do so. Another reason is that some parole decision makers remain reluctant to abandon long-standing approaches to decision making. In March of 2015, the Robina Institute's Parole Release and Revocation Project disseminated a survey to every state and the U.S. Parole Commission.¹² When the chairs of parole boards were asked to rank the range of factors they consider when making release decisions, the majority of respondents rated the nature of the offense as most important, followed closely by offense severity. Seventeen out of 39 Robina survey respondents indicated that they use parole guidelines. Three additional respondent states have started using guidelines since the survey was conducted, increasing the total to 20 of the 39 respondents.¹³

All paroling authorities should adopt guidelines that augment the professional judgment of board members and create a formal decision pathway that incorporates evidence-based factors. This type of structure is particularly important in maintaining decision-making continuity, given that parole decision makers often serve relatively short terms.¹⁴

The paroling authority must work with its system partner, the department of corrections, to determine what should happen to promote release readiness, in general and for each individual. Those steps should be agreed upon and implemented prior to the time a person becomes eligible for release. Legislation should require this collaboration and provide guidance in the form of broad goals for the agencies to achieve together. These goals should include the direction to prioritize prison space for the most deserving cases and should require agreement between parole and corrections agencies on which tools will be used to measure risk and needs and which programs will most effectively address those areas or needs requiring remedial intervention.

C. Victims

Recommendations

- Require victim impact statements to permanently reside in parole files to minimize the traumatic effects and effort of repeated victim input. Permit the victim to withdraw or supplement prior statements. Such statements might also inform victims about the parole process, decision tools and key timelines.
- Require victims to be advised that the paroling authority is conducting a forward-looking assessment of the parole candidate's risk and readiness for release as part of the process, not a revisiting of the crime and appropriate punishment. Advise victims that their input will be particularly helpful regarding specific safety concerns and protective measures that may be beneficial should the person be granted release.

Discussion

Victims' rights advocacy in the 1980s altered the landscape of parole.¹⁵ In short order, the United States became the first country in the world to permit crime victims or next of kin to appear before parole boards. Today, crime victims have a wide range of rights, such as being notified of all public proceedings in criminal cases and their opportunities for participating in many of these forums, including parole hearings. It is important that the notifications, where they do not do so already, include a description of the parole process and timelines for decisions. One way in which the latter may be accomplished is through victim impact statements.

All 50 states authorize victims to submit impact statements to paroling authorities¹⁶ and make parole recommendations, but very few victims do so, as most do not want to revisit the crime. However, when victim participation does increase, parole denials also appear to increase.¹⁷

Paroling authorities typically consider input from "third party" sources as well, such as prosecutors, judges, and parole candidates' families,¹⁸ but when asked to rank input in order of importance, parole board chairs report that victim input is much more significant than that of sentencing judges, prosecutors, or parole candidates' families.¹⁹

Whenever written victim input is provided to the paroling authority, it should be preserved and made available for each parole decision, so that the victim is not required to repeat the effort. However, victim input on parole decisions needs to be tailored to the context in which the decision is made. Several years may have elapsed between sentencing and the parole hearing, and the relevance of the information that may be provided by the victim could have changed during that time.²⁰ Victim input is most relevant when it pertains to the parole board's focus on the interrelated issues of risk, rehabilitation, and readiness for release. Input from victims may assist the board in framing safety or protective measures and conditions of supervision.

D. Process Recommendations

- Require parole candidates to have access to the information and assessments used to inform parole release decisions in advance of their hearing, subject to required redactions to comply with confidentiality laws.
- Require parole candidates to be given a meaningful opportunity to rebut or contest the information, to provide written information supporting their argument for parole, and to call witnesses.
- Require that parole candidates have access to any risk assessment scoring in their case, coupled with a meaningful opportunity to challenge any errors that are found. Allow parole candidates to have access to an advocate to assist them, both in preparing and then presenting information to the paroling authority.

Discussion

Minimal due process is constitutionally required for people awaiting a parole release decision. Only an opportunity for a hearing and a reason for denial are required, even under a parole statute that creates a presumption of release, and therefore a “liberty interest” in release.²¹ But common practices should go much further than the constitutional minimum. There are clear advantages to following a predictable and fair protocol for such a fundamental decision. Notably, it enhances the legitimacy of the system, according to the research on procedural fairness,²² and avoids differential treatment as paroling authority personnel change over time.

The Robina parole survey found that in 38 of 39 responding states, either prison or parole staff provide notice to individuals about the parole process when they are admitted to prison or shortly thereafter. In 30 of those states, individuals are told their initial parole hearing date soon after admission.²³

Most parole boards do not have the staff or time to keep up with their release decision workload, and the quality of the decisions suffers as a result.²⁴ Parole release hearings, when they exist, often consist of brief interviews of those being considered for release.²⁵ The role of the person being considered varies across states, but is often limited to responding to questions. When individuals are permitted to contribute more, they are frequently ill-equipped to argue persuasively that they are suitable, prepared, and ready for release.

Legal assistance is far from the norm in parole proceedings. Some states actually prohibit representation by counsel. For individuals who can afford private counsel, most states permit only limited representation, such as the submission of written statements. Only a handful of jurisdictions provide counsel for indigent individuals at state expense.

Some states refuse to give those afforded a hearing or an interview access to the information the board relies upon in reviewing case files, while others routinely allow it. Most states give the board discretion to disclose some of the information in the file on a case-by-case basis.

In terms of the provision for the review or appeal of a parole board decision, states permit individuals to appeal or request that the releasing authority reconsider its decision through one or more of the following: via statute in 8 states; administrative rule in 18 states, and agency policy in 16 states. Another 11 states do not provide for a review.²⁶

Though not all states conduct hearings in individual cases, greater institutional investment is needed to provide parole candidates with a meaningful opportunity to prepare and be heard via a protocol that seeks to ensure fairness and transparency throughout the proceeding. This issue may become even more important given the U.S. Supreme Court's recent decisions in *Graham v. Florida* (2010), *Miller v. Alabama* (2012), and

Montgomery v. Louisiana (2016).²⁷ While these decisions target juveniles serving life without parole, they may carry long-term implications for “ordinary” parole release decision-making, namely, that candidates be given a realistic opportunity for release during a hearing that considers their individual circumstances.²⁸

Process matters, and the release decision is profound. Parole candidates should be given access to the information used to consider their release on parole, sufficiently in advance of the hearing, and subject to compliance with the state’s confidentiality requirements. With assistance from a skilled advocate, not necessarily legal counsel, they should have a meaningful opportunity to contest facts, opinions, or recommendations, and should be allowed to make written submissions.²⁹ They should also be given access to any risk assessment scoring in their case, and have a meaningful opportunity to challenge any errors that may have been made, or the validity of the instrument itself (although redundant challenges to the instrument’s validity need not be permitted).

II. SUPERVISION

A. Conditions

Recommendations

- Repeal statutory conditions of parole supervision and stipulate that the standard parole conditions adopted by the paroling authority be as few as necessary.
- Require the following:
 - special parole conditions responsive to the assessed risk and needs of the individual
 - minimal conditions placed on low-risk people
 - frontloading of conditions during the initial period of supervision when the risk of non-compliance or reoffending is highest
- Allow conditions to be modified, eliminated, or added by parole officers with appropriate supervisory review, based on the person's behavior and continuing stability in the community.

Discussion

The paroling authority's first decision point after granting parole concerns how to support successful reentry by addressing the releasee's environment, activities, behaviors, and mobility. Conditions of supervision seek to manage continuing risk and encourage ongoing risk reduction, thereby avoiding further harm to victims and facilitating the individual's return to a prosocial environment.

Paroling authorities are prone to setting too many conditions in an effort to structure release and support their decision to parole. Many parole boards responding to the Robina survey (26 of 40 respondents) indicated that they did not have policies to minimize the number of conditions for those assessed as low-risk, contrary to the NPRC's (2013) *Practice Target #7*, which directs decision makers to minimize requirements for low-risk individuals and target conditions to the criminogenic needs of those scored as medium- and high-risk.

Boards that are not guided by a validated risk and needs assessment when imposing conditions are likely to miss important criminogenic factors for individuals who are granted release. Criminogenic risk and needs assessment tools can identify crucial dynamic risks and enable paroling authorities to make more informed decisions about conditions that address the vulnerabilities and needs of those subject to parole or post-release supervision. Decision makers can thus avoid the broad-brush practice of imposing a bewildering or overwhelming array of supervision conditions that do not facilitate success under supervision.

The established principles of effective intervention provide an important foundation for designing and applying evidence-based condition-setting practices.³⁰ Bonta and Andrews have identified eight criminogenic risk and need factors that offer clear guidance for setting conditions that most effectively target risk factors.³¹ These risk factors assist in determining not only the intensity of services and surveillance, but also the most promising areas for intervention and treatment associated with reducing the likelihood of future criminal behavior.

The conditions of parole or post-release supervision should be modified, eliminated, or added as circumstances warrant. The authority for doing so should be extended not just to the board and field agency supervisors, but to parole officers, as appropriate. The Robina parole survey revealed that 93 percent of parole board members have the authority to modify conditions, 41 percent of parole officers have this authority, with some level of supervisory approval, and 39 percent of field service agencies have the authority with board approval. Nearly two-thirds of the respondents reported that they require more conditions for individuals assessed as medium or high risk than those assessed as low risk.³² The remaining paroling authorities reported that they did not tailor the number of conditions to risk level.

Several overlapping recommendations on best practices that guide condition setting are noted in a report focusing on parole supervision strategies designed to enhance reentry outcomes.³³

- Tailor conditions of supervision to avoid a long, generic list of conditions that may be unrealistic. Carl Wicklund, former Executive Director of the American Probation and Parole Association, refers to the “three Rs” of supervision conditions: realistic, relevant, and research-based.
- Focus resources on individuals assessed as being at a high risk of reoffending. NPRC (2013) *Practice Target #4* advises decision makers to use their influence to leverage institutional and community resources to address the criminogenic needs of medium- and high-risk people.
- Focus supervision resources on the initial period of release during which supervisees are at the highest risk of reoffending. This recommendation implies that conditions are dynamic and should correspond to changing needs throughout the term of supervision. It also encompasses conditions that address both criminogenic needs and basic transitional requirements such as housing, medical and mental health services; food; and transportation. While low-risk individuals may have few, if any, criminogenic needs, they may have myriad basic transitional concerns that must be remedied.

Research on risk, needs, and responsivity, or “RNR,” reinforces the importance of targeting multiple criminogenic needs, although not all at once, to maximize risk reduction. While addressing one to two needs areas may reduce recidivism up to 19 percent, addressing three or more needs can reduce recidivism up to 51 percent.³⁴ The more services and treatment referrals target such needs, the stronger the effect on recidivism reduction.

B. Credit

Recommendations

- Allow individuals to accrue earned time credit during parole supervision to reduce the amount of time to completion of the sentence. Require the paroling authority to establish policy to ensure the award and forfeiture of credit is fairly and consistently applied to all individuals that are eligible.

- Ensure that the forfeiture of “street” time upon revocation is limited to the period of time the person has willfully absconded or committed other violations. Disallow street time forfeiture otherwise.

Discussion

Additional time credit, usually called “good time” or “earned time,” rewards individuals with reductions in time served when they comply with institutional rules and participate in required programs and treatment until parole eligibility is reached or the person is released from prison. In 2011, the National Conference of State Legislatures reported that 43 states had either good time or earned time credit systems for their correctional populations.³⁵

Awarding additional time credit for appropriate behavior during supervision is less common than awarding such credit during incarceration. The Robina parole survey found that 15 of 39 respondents have a system to reduce the length of supervision through awarded time credits. Expanding this practice would promote prosocial behavior by incentivizing those on parole to comply with conditions of their supervision, with the reward of reduced time under supervision.

Actual time served on supervision, or “street time,” is often forfeited when a person’s supervision is revoked, which extends the expiration of the sentence by the same amount of time as the amount forfeited. The better practice is to allow forfeiture only for time spent in actual violation of supervision, for example, as an absconder.

Three recommended practices support the awarding and forfeiting of additional time credits as a behavioral incentive:

- Implement a system of earned discharge. Earned discharge can be accomplished through the award of additional time credits to reduce the remaining time on the sentence.
- Foster constructive interaction between the person on parole and the parole officer to incentivize the former to engage with needed services and supports. Rewarding positive behavior encourages continued interaction to further promote desired behavior change. The challenge for parole officers is to find rewards that are desirable and truly motivating. Additional time credit is high on the list of effective rewards.

- Impose swift, certain, and fair responses to violation behaviors. Just as crediting time is an effective reward, forfeiting time is a compelling sanction when done at appropriate times, and as discussed further below.³⁶

C. Terms

Recommendations

- Require paroling authorities to fairly and consistently consider individuals for early discharge, with the clear expectation that those who meet the established discharge criteria will be recommended for early discharge from supervision.
- Where possible, according to interpretation of the state's constitution, early discharge from supervision should be defined as the completion and expiration of a sentence rather than as a status of non-supervision or reduced supervision that keeps persons under the jurisdiction of the paroling authority.
- Require paroling authorities to consider a person's assessed risk level and behavior when evaluating the individual for early discharge. Those who are low-risk should be targeted for early discharge after a period of sustained compliance (e.g., one year).
- Specify a minimum period of time on supervision that must be satisfied to be eligible to earn early discharge. Statute and policy may exclude violent, sexual and predatory cases from early discharge consideration.

Discussion

Parole laws establishing required periods for parole or post-release supervision vary from state to state. Sometimes this period is mandated as a discrete post-release term, but more commonly it is whatever time is left over in the sentence after release from incarceration. The Robina parole survey findings on length of term and early discharge demonstrate that there is no prevailing policy regarding the timing of either early or final discharge from supervision:

- Almost half of the responding states (16 of 37) require a minimum amount of time to be served before final discharge may be considered; the remaining responding states defined the amount of time to be served as the period between the date of release and the expiration of the maximum sentence.

- Nearly two-thirds of the responding paroling authorities possessed the authority to grant an early discharge from supervision.

Early discharge from supervision can be clearly guided by evidence-based practices that incentivize prosocial behavior and preserve finite parole officer resources for high-risk and non-compliant supervisees. Despite these benefits, however, a significant number of states have not enacted policies to encourage the practice of early discharge, and even those boards that have the authority to permit early discharge are often reluctant to do so because they fear that someone they discharge early will reoffend. As a result, low risk individuals may serve longer on parole than those who pose a high-risk. This reluctance could be statutorily addressed to make early discharge a more prescriptive practice.

Early discharge from supervision has been recognized as a sound practice in a number of writings directed to paroling authorities. A training resource jointly sponsored by the Association of Paroling Authorities International and NIC advocated for reexamination of the length of parole supervision and recognition that excessive periods of supervision consume limited resources that may not be needed for certain individuals subject to parole. Another recommendation argued for the adoption of a limited period of minimal supervision for low-risk individuals.³⁷

The commitment to best practices was further developed in a NIC training document offering what the author referred to as a “comprehensive framework to inform and guide parole board decision making aligned to evidence-based practices.”³⁸ The report urged early discharge of moderate-risk individuals and called for paroling authorities to develop formal policy to structure fair and consistent early discharge procedures.

Further supporting this practice, a report referenced earlier targeting strategies for improving reentry outcomes calls for paroling authorities to create a system of early discharge as a tool to incentivize prosocial behavior.³⁹ Promoting such a system depends on statutory authority for early discharge, which in turn can help manage parole officer workloads by requiring community resources to be targeted to those supervisees who are most at risk of reoffending.

For medium- and high-risk individuals, the American Law Institute recommends that the length of supervision be decoupled from the original term of imprisonment and limited to a maximum of five years.⁴⁰ For low-risk people, no more than 12 months of supervision offers a reasonable window of time to address transitional reentry needs for services and support.⁴¹ A jurisdiction's statute or governing policy may exclude individuals convicted of serious, violent, and/or predatory crimes, recognizing there are occasions where the gravity of the crime committed may not be reflected in the person's risk level.

D. Sanctions and Incentives

Recommendations

- Require paroling authorities and the supervising agency to establish a broad policy-driven behavior response model that reflects evidence-based components:
 - responses should encompass both positive and negative behaviors and should include tailored rewards and sanctions, as appropriate;
 - responses to violations should be swift, certain, and proportionate;
 - use of community-based sanctions should be maximized prior to any custodial sanctions; custodial sanctions should be permissible and encouraged in lieu of full revocation; and
 - responses to violations should include both sanctions and a corrective intervention to support behavior change.
- Require that the paroling authority's decision to revoke parole be reserved for:
 - arrests and/or convictions for serious criminal violations, excluding nonviolent misdemeanors;
 - absconding; or
 - escalating, continuing violations for which other sanctioning options have been exhausted.

In most instances, the person should not be revoked for the remainder of the sentence. The period of revocation should correspond to the amount of time required prior to the next parole release review rather than revocation to discharge.

Discussion

The purpose of post-release supervision is to continue the correctional goal of changing behavior and curbing recidivism. The remainder of a sentence after release must be carefully administered to preserve a period of continued supervision, as well as the credible threat of reincarceration for new criminal behavior or violations, while rewarding prosocial behavior with time credits and other incentives.

The Robina parole survey showed that the majority of parole boards, 31 of 38 respondents, adjudicate violations and exercise wide-ranging authority in determining whether individuals who violate the conditions of supervision will remain in the community or be revoked. Most respondents (28 of 31) reported that their revocation authority neither expanded nor contracted during the five years prior to the survey. Almost all respondents, 30 of 37, have the authority to revoke someone for a violation of any of the conditions of supervision.⁴²

Many states continue to grapple with the high cost of incarceration and high rates of recidivism. One common strategy for conserving bed space and containing cost is to use structured sanctions for those who violate the conditions of parole in lieu of a lengthy return to prison. This approach is consistent with research on effectively promoting prosocial behavioral change and shifts the goal of supervision from surveillance, monitoring, and control to behavioral change and recidivism reduction.⁴³

Research has shown that longer periods of incarceration do not produce a corresponding reduction in recidivism.⁴⁴ Incarceration responses need to be proportionate to the violations to be effective, which means there must be shorter custodial sanctions that fall short of full revocation, except in the case of serious violations that threaten public safety. But the research is also clear that sanctions applied in the absence of treatment interventions do not contribute to reductions in recidivism.⁴⁵

III. ORGANIZATION

A. Appointment Recommendations

- Establish in statute the structural protection and independence of the paroling authority in the conduct of case-level decisions.
- Members should be appointed to the parole board without regard for political affiliation or activity.
- Members' terms should be established by law, staggered so that not all members depart simultaneously, and include the possibility of reappointment.
- Members should be protected from removal in the absence of malfeasance.

Discussion

Quality parole decisions begin with an appropriate institutional structure, including how the board members (and chairs) are appointed and what qualifications they must possess. The adoption and continuity of releasing authority policies and decision-making practices is affected, sometimes dramatically, by the board members' terms of appointment, reappointment, and conditions for removal.

Significant uniformity is found across most states in terms of the appointment process.

- Direct gubernatorial appointments, usually subject to legislative confirmation, account for membership on the majority of parole boards and appointment as chair.⁴⁶
- Most often, board members are appointed to serve four to six years (32 of 44 respondents on the Robina parole survey).
- Most boards have staggered terms to eliminate wholesale turnover (36 of 42 respondents on the Robina parole survey).

There is more variation in terms and removals, but in most states the chair and members may be removed as easily as they were appointed.

- In a small number of states, the members' terms are coterminous with the governor, or members serve at the pleasure of the governor.
- Of 40 respondents on the Robina parole survey, the most common reasons for removal include "malfeas-

ance and misfeasance" (23 states), "criminal conduct" (18 states), and "ethics laws violations" (15 states). In 14 states, board members may be removed without cause, and in another seven states, they may be removed due to the governor transitioning out of office).⁴⁷

At least two states use a special panel to screen suitable applicants for the parole board and make recommendations to the governor, who is then authorized to make an appointment. A special panel provides a buffer to direct gubernatorial appointments, thereby reducing the politicization of the process. The diversity and different branches of government represented in both states contributes as well.⁴⁸ It is important for jurisdictions that might consider such an option that the panel be nonpartisan and include a balance of viewpoints. The quality and credibility of the special panel itself, in addition to the statutory credentials needed for parole board membership discussed in the next section, offer one example of a sound pathway toward the institutional strengthening of parole boards.

Once appointed, parole boards' institutional vulnerability often fosters risk-averse decision making. Boards experience immense public and political pressure to dramatically reduce their rates of parole release in the aftermath of tragic, albeit isolated, incidents of violence by people on parole.⁴⁹ Burke and Tonry recently observed that, since 1999, there has been a marked reduction in the percentage of those granted discretionary release, in no small measure due to parole boards' increasing reluctance to release individuals before the expiration of their maximum sentences.⁵⁰

During the service of their term, board members know the safe decision is to delay releases beyond initial parole eligibility dates. Conversely, they understand adverse consequences will follow if even one person who is released commits a horrible crime. A recent report shows that parole board chairs increasingly recognize their institutional vulnerability as a serious issue.⁵¹ Parole law should insulate competent board members from losing their jobs for making challenging decisions in good faith that will sometimes turn out badly.

B. Qualifications

Recommendations

- Parole board members should be required to possess a college degree in criminology, social work, a related social science, or a juris doctor or other advanced degree in a relevant field and have at least five years of work experience in a related field such as corrections, community corrections, criminal law, or behavioral health.
- Appointments should balance the relevant competencies of board members, and statutory standards should specify the inclusion of members with expertise in victim awareness, the prison experience, and behavioral health, as well as demographic and geographic diversity, including a tribal perspective in some states.
- Hearing examiners, deputy commissioners, or equivalent non-board member decision makers should have the same qualifications as board members.

Discussion

It has been a longstanding criticism that few formal credentials—whether educational, experience-based, or other—are required for appointment to parole boards.⁵² The Robina survey revealed that 20 of 45 respondent jurisdictions had no statutory qualifications.⁵³ Even in states with qualifications, a majority specify only vague educational requirements or relevant work experience.⁵⁴ It is unusual to see statutes calling for specialized knowledge or professional expertise that bridges corrections, criminology, behavioral health, and the growing literature on evidence-based practices.

Parole board members are called upon to apply complex legal rules and social science research findings in their decision making.⁵⁵ They should be required to hold a college degree in criminology, corrections, or related areas of social science, including social work and clinical psychology, or possess a law degree, coupled with substantial real-world work experience.⁵⁶ Further, since many states use staff such as parole commissioners to fulfill board members' voting roles, those staff should have comparable qualifications.⁵⁷

C. Mission

Recommendations

- Establish the paroling authority's independence as a case-level decision maker while requiring it to share responsibility with other criminal justice system partners in achieving system goals such as public safety and recidivism reduction.
- Specify the paroling authority's objectives as a partner with institutional and community corrections, community supervision agencies, the courts, and community treatment and service providers.
- Require the paroling authority to engage in strategic planning in concert with correctional agency partners.
- Identify specific, overarching system goals for which the paroling authority has some level of responsibility or involvement and hold the agency accountable for accomplishing them.
- Require workforce pre-service and in-service training. There may be situations that prompt the legislature to specify components of that training.
- Provide appropriations that are commensurate with the responsibilities and workload placed on the paroling authority.

Discussion

Numerous parole statutes speak to the independence of releasing authorities. Much less common is the statutory expectation that the paroling authority partner with other stakeholders in the larger system and attend to leadership responsibilities to advance the agency's mission.

The paroling authority must focus on the day-to-day work of making parole release and revocation decisions, while at the same time attending to other salient responsibilities and agency goals.⁵⁸ Paroling authorities need to “develop meaningful partnerships with institutional corrections, community supervision, victim advocacy (and others) to encourage a seamless transition process and the availability of sound, evidence-based programs” (NPRC 2013), *Practice Target #3*. They have a responsibility to mobilize interdisciplinary, collaborative leadership teams; engage in a rational planning process; integrate stages of offender processing through the corrections system; and involve non-correctional stakeholders in these efforts.⁵⁹

The Robina parole survey noted that every one of the responding parole board chairs agreed or strongly agreed that releasing authorities and departments of corrections must coordinate their policies and practices to facilitate effective reentry planning for people who are granted release.⁶⁰

Creating a clear mission and strategic plan with concrete performance objectives is a universally recognized principle of organizational leadership. Developing a skilled and knowledgeable workforce and continuing to strengthen and enhance that knowledge is equally recognized as critical for success. These leadership goals are represented in NPRC (2013) *Practice Target #10* for paroling authorities: “Develop and strengthen agency-level policymaking, strategic management, and performance measurement skills and capacities.”⁶¹

Example performance objectives for paroling authorities include:

- Preserving finite prison bed space for individuals convicted of the most serious and violent offenses;
- Releasing supervision-manageable individuals consistent with state parole eligibility requirements;
- Targeting the use of finite resources guided by validated risk and needs assessments;
- Managing a seamless reentry process;
- Setting appropriate conditions of supervision; and
- Developing effective strategies for responding to violation behaviors.

Paroling authorities are dependent on their sister agencies, notably a state’s department of corrections, and the legislature to accomplish many of the requirements that would be imposed through these recommendations. For parole to succeed, the state legislature must provide appropriations that are commensurate with the responsibilities and workload placed on the paroling authority and must monitor and enforce the cooperation that is necessary from other agencies.

The legislature must also require and fund the development of human capital within paroling authorities through training. This is a function that all too often suffers in tight budgetary environments. Pre-service training should relate to paroling authorities’ responsibilities and the mechanics of decision making, while in-service training, ideally on an annual basis, can go deeper into decision making, behavior change, and risk/needs assessment.

D. Transparency Recommendations

- Require the paroling authority to collect and analyze data to determine whether the agency is achieving its mission and goals.
- Ensure that the paroling authority establishes agency performance and outcome measures that are directly responsive to statutory responsibilities and consistent with agency goals for release decisions, supervision, revocation, recidivism, and caseloads.
- Require the paroling authority to adopt policies regarding decision making, the use of structured tools and guidelines, and other operational information.
- Require paroling authorities to maintain policies in an accessible format on the internet.
- Require the publication of a broad range of parole data, including grant rates, revocation and recidivism rates, length of time served, successful supervision completions, and other performance metrics.
- Require a formal post-event review of critical incidents, such as a high-profile crime committed by someone on parole status.

Discussion

Paroling authorities vary in their focus on establishing performance measures, using relevant data and findings to improve processes and outcomes, and publishing such findings for transparency.⁶² Recording and analyzing data may be a function of the paroling authority or the department of corrections; regardless, the paroling authority should recognize the need to rely on data to inform its practices. Some parole boards make limited use of data to analyze decision making and strengthen their practices because of limited access to the relevant data held by another agency, finite analytical capacity, or insufficient appreciation for the management benefits derived from the thoughtful use of such information.

Transparency refers to full access to information used in individual or shared decision making, including the policies guiding such determinations. Transparency and accountability serve to enhance the confidence of important stakeholders such as judges, victim advocates, and prosecutors. As Burke notes, “transparency can also document the care, consideration, and rationale for a decision that was reasoned and supportable—but led to a tragic failure.”⁶³

Traditionally, paroling authorities have adhered to the concept of parole as an act of grace and maintained their attachment to strict independence. As a result, they have published little information about their decisions, the reasons for them, or the assessment tools or factors used to guide the decisions. This absence of transparency has frequently resulted in sharp criticism of paroling authorities, namely, that they have engaged in arbitrary and capricious decision making.

Communication and transparency are owed to institutional stakeholders: corrections, reentry and community supervision agencies, service providers, and the courts. These stakeholders need to understand how paroling authorities make decisions in order to be effective partners with them. Victims and their advocates likewise benefit from the paroling authority's transparency. When parole decision making is transparent, victim stakeholders and the public are more likely to view the system as fair, objective, and consistent, and recognize that they as advocates can more readily be involved in the release and reentry process. To gather the requisite public input on policies, administrative rulemaking may be required in some states.

Transparency also includes a thoughtful response to a critical incident, typically when a person on parole commits a high-visibility, violent crime. A formal review of the critical incident to determine any system failing is a longstanding, recognized practice in law enforcement and institutional corrections. Paroling authorities typically have not engaged in a formal critical incident review process to analyze how and why the event occurred and to determine if any corrective actions are warranted. However, the National Institute of Justice has been investigating the feasibility of using "sentinel event reviews" since 2011 and has embarked on a project called the "Sentinel Events Initiative".⁶⁴

In criminal justice, a sentinel event could be the conviction of an innocent person, a police-citizen encounter that unexpectedly turns violent, or the release from prison of a dangerous person. A Sentinel Events Report brings together all of the system's stakeholders (law enforcement, crime laboratory personnel, prosecutors, defense lawyers, judges, corrections officials, victim advocates, and others, depending on the nature of the incident) to review the event and determine—through a deliberative, transparent, non-blaming process—how and why it happened and what can be done to prevent a similar outcome in the future.

IV. CONCLUSION

The recommendations in this paper are intended to provide a foundation for modernizing and aligning statutory language with the evolving body of research on evidence-based practices across the parole process. The recommendations are designed to assist a collaborative effort by a state working group in wed- ding the adoption of evidence-based practices dis- cussed throughout with the statutory changes that may be required to achieve those practices. The over- riding aim has been to offer reasonable and informed observations on the salient elements that should guide the crafting of statutory language, albeit tailored to the political and cultural environments unique to each state, not to offer model legislation.

Though there is tremendous variation across the country in sentencing structures and the operation of releasing authorities, these recommendations provide a blueprint for meaningful reform. Embedding such changes in statute, policy, and practice will enable parole agencies to achieve greater fairness and effec- tiveness, promote public safety, and encourage the wise use of scarce public resources.

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APPENDIX A

Key Resources for Releasing Authorities

The documents listed here provide releasing authorities with information about parole reform grounded in evidence-based policy and practice. The resources may be retrieved for review through a variety of sources, including the National Institute of Corrections, the National Parole Resource Center, the Association of Paroling Authorities International, the Pew Charitable Trusts' Public Safety Performance Project, the Robina Institute of Criminal Law and Criminal Justice within the Law School at the University of Minnesota, and the CSG Justice Center.

Burke, Peggy B. Ed. 2003. *A Handbook for New Parole Board Members: Part of a Resource Kit for New Parole Board Members*. Washington, D.C: National Institute of Corrections.

Burke, Peggy B. 2011. *The Future of Parole as a Key Partner in Assuring Public Safety*. Washington, D.C: National Institute of Corrections.

Burke, Peggy B. and Leilah Gilligan. 2011. *Special Challenges Facing Parole*. Washington, D.C: National Institute of Corrections.

Burke, Peggy B. 2015. "The Future of Sentencing: Parole Discretion and Risk Reduction." *Federal Sentencing Reporter*. 28 (2): 88-91.

Burrell, William D. 2017. "Risk and Needs Assessment in Probation and Parole: The Persistent Gap Between Promise and Practice." In Faye S. Taxman. 2017. *Risk and Need Assessment: Theory and Practice*. New York: Taylor and Francis: pgs. 23-48.

Burkes, Kaleena J., Jason P. Robey, Ebony L. Ruhland, and Edward E. Rhine. E. 2017. *Releasing Authority Chairs: A Comparative Snapshot across Three Decades*. Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice, University of Minnesota Law School.

Campbell, Nancy M. 2008. *Comprehensive Framework for Paroling Authorities in an Era of Evidence-Based Practice*. Washington, D.C: U.S. Department of Justice. National Institute of Corrections.

Carter, Madeline M. 2011. *Evidence-Based Policy, Practice and Decision-making: Implications for Paroling Authorities*. Washington, D.C: National Institute of Corrections.

National Parole Resource Center. 2013, "Paroling Authorities Self-Assessment Toolkit," Ten Practice Targets. See <http://nationalparoleresourcecenter.org/toolkit2/index.php>.

Ruhland, Ebony L., Edward E. Rhine, Jason P. Robey, and Kelly Lyn Mitchell. 2016. *The Continuing Leverage of Paroling Authorities: Findings from a National Survey*. University of Minnesota, Robina Institute of Criminal Law and Criminal Justice.

Solomon, Amy L., Jenny W.L. Osborne, Laura Winterfield, Brian Elderbroom, Peggy P. Burke, Richard P. Stroker, Edward E. Rhine, and William D. Burrell. 2008. *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes*. Washington, D.C: The Urban Institute.

Stroker, Richard. 2011. *Paroling Authorities' Strategic Planning and Management for Results*, Washington, D.C: National Institute of Corrections.

Stroker, Richard, Peggy B. Burke, and Leilah Gilligan. 2010. *Core Competencies: Resources for Parole Board Chairs, Members, and Executive Staff*. Washington, D.C: National Institute of Corrections.

ENDNOTES

- ¹ Danielle Kaeble, *Probation and Parole in the United States 2016* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 2018).
- ² Though not addressed, the authors recognize that there are significant criticisms raised about the discourse and implementation of what some refer to as the RNR model, or a more comprehensive approach to evidence-based policy and practice. See Cecelia Klingele, “The Promises and Perils of Evidence-Based Corrections,” *Notre Dame Law Review*, 91(2): 537-584 (2013); Pari McGarraugh, “Up or Out: Why ‘Sufficiently Reliable’ Statistical Risk Assessment is Appropriate at Sentencing and Inappropriate at Parole,” *Minnesota Law Review*, 97: 1079-1113 (2013); Kimberly Thomas and Paul Reingold, “From Grace to Grids: Rethinking Due Process Protection for Parole,” *Journal of Criminal Law and Criminology*, 107(2): 213-252 (2017). The criticisms, especially surrounding the field’s growing reliance on risk assessment, warrant consideration by those with responsibility for their application. For one response to the concerns regarding reliance on risk assessment tools for parole board decision making, see Recommendation 4 in Edward Rhine, Joan Petersilia, and Kevin Reitz, “The Future of Parole Release,” in: *Reinventing American Criminal Justice*, Michael Tonry and Daniel Nagin eds. *Crime and Justice: A Review of Research 46*, Chicago: University of Chicago Press, 2017.
- ³ The discretionary reach of parole boards has been sharply curtailed in some states, and eliminated in others. Nonetheless, they display substantial discretionary authority in 34 states with indeterminate sentencing structures; far less so in 16 states that operate within determinate systems of sentencing. Even in the latter, however, paroling authorities exert sizeable leverage over “old code” cases, and other components of the parole process (Edward Rhine and Alexis Watts. “Parole Boards within Indeterminate and Determinate Sentencing Structures,” April 3, 2018. See: <http://robinainstitute.umn.edu/news-views/parole-boards-within-indeterminate-and-determinate-sentencing-structures>).
- ⁴ This concept aligns with utilitarian and non-utilitarian sentencing goals (Norval Morris, *The Future of Imprisonment*, Chicago: University of Chicago Press 1974). The period of incarceration, which takes into account the severity of the crime and the harm done to the victim, accomplishes the retributive or non-utilitarian goal of ensuring that an appropriate dosage of punishment is imposed. Once the punishment portion of the sentence has been satisfied, the paroling authority acts within the utilitarian sentencing goal of rehabilitation, and the expectation that the individual will be paroled as soon as he or she is determined to be ready for release.
- ⁵ Peggy B. Burke, “The Future of Sentencing: Parole Discretion and Risk Reduction,” *Federal Sentencing Reporter* 28 no. 2: 88-91 (2015); See Rhine et.al, *supra* note 2.).
- ⁶ Don A. Andrews, James Bonta, and Stephen S. Wormith. “The Recent Past and Near Future of Risk and/or Need Assessment,” *Crime and Delinquency* 52 no. 1 (2006): 7-27; Don A. Andrews, “Principles of Effective Correctional Programs,” in *Compendium 2000 on Effective Correctional Programming*, ed. Larry L. Motiuk et al. (Ottawa, Canada: Correctional Service of Canada, 2007); James Bonta and D. A. Andrews, *The Psychology of Criminal Conduct*. 6th ed. (New York: Routledge, 2017). Many of the principles associated with this literature have been translated into “Ten Practice Targets” by the National Parole Resource Center, *Paroling Authority Self-Assessment Toolkit, Ten Practice Targets*, Washington, D.C: *National Institute of Corrections* (2013). Where applicable, these targets are referenced in the discussion that follows.
- ⁷ Matthew R. Durose, Alexia D. Cooper, and Howard N. Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, Washington DC: U.S. Department of Justice, Bureau of Justice Statistics, (2014).
- ⁸ National Parole Resource Center (2013). *supra* note 6.
- ⁹ Peggy Burke, eds. *A Handbook for New Parole Board Members: Part of a Resource Kit for New Parole Board Members*. Washington, D.C: National Institute of Corrections (2003).
- ¹⁰ The Council of State Governments is a national, non-profit, non-partisan membership association of state government officials that engage members of all three branches of state government. The CSG Justice Center provides technical assistance through the Justice Reinvestment Initiative, which is supported by funding from the U.S. Department of Justice’s Bureau of Justice Assistance (BJA) and The Pew Charitable Trusts. <https://csgjusticecenter.org/jr/contact/>.
- ¹¹ The National Parole Resource Center (NPRC) is a partnership of the Center for Effective Public Policy and the Association of Paroling Authorities International, supported by funding from the Bureau of Justice Assistance (BJA). The NPRC maintains links with a growing network of organizations that provides information and guidance on substantive topics and related resources. <http://nationalparoleresourcecenter.org/>.
- ¹² Ebony L. Ruhland, Edward E. Rhine, Jason P. Robey, and Kelly Lyn Mitchell, *The Continuing Leverage of Releasing Authorities: Findings from a National Survey*, Robina Institute of Criminal Law and Criminal Justice (2016). Forty-five states responded. The five non-respondents were Maine, North Carolina, Tennessee, Vermont, and Wisconsin. The response rate often varied for individual questions, ranging from approximately 30–40 states, depending on the question.
- ¹³ One of the co-authors reported this based on technical assistance work in states since the Robina parole survey was completed.
- ¹⁴ Burke, *supra* note 5.
- ¹⁵ Joan Petersilia. 2003. *When Prisoners Come Home: Parole and Prisoner Reentry*. New York: Oxford University Press; Kathryn Morgan and Brent L. Smith. “Victims, Punishment, and Parole: The Effect of Victim Participation on Parole Hearings.” *Criminology and Public Policy*. 4: 333-60 (2005).
- ¹⁶ Susan Kinnevy and Joel M. Caplan. 2008. *Findings from the APAI International Survey of Releasing Authorities*. Philadelphia: Center for Research on Youth and Social Policy. University of Pennsylvania; Rhine, et.al., *supra* note 2.

- ¹⁷ Maureen McLeod, “Getting Free: Victim Participation in Parole Board Decisions.” *Criminal Justice*. 4: 13-43 (1989); William H. Parsonage, Frances P. Bernate, and Jacqueline Helfgott. “Victim Impact Testimony and Pennsylvania’s Parole Decision Making Process: A Pilot Study.” *Criminal Justice Policy Review*. 6: 187-206 (1994); Julian Roberts, “Listening to the Crime Victim: Evaluating Victim Input at Sentencing and Parole,” in *Crime and Justice: A Review of Research*, Volume 38, Edited by Michael Tonry, Chicago: University of Chicago Press; Frederic G. Reamer, *On the Parole Board: Reflections on Crime, Punishment, Redemption, and Justice*. New York: Columbia University Press (2017).
- ¹⁸ Ruhland et.al., *supra* note 12.
- ¹⁹ Kaleena J. Burkes, Jason P. Robey, Ebony L. Ruhland, and Edward E. Rhine, *Releasing Authority Chairs: A Comparative Snapshot across Three Decades*. Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice, University of Minnesota Law School, 18-19 (2017).
- ²⁰ Roberts, *supra* note 17.
- ²¹ “The Due Process Clause applies when government action deprives a person of liberty or property; accordingly, when there is a claimed denial of due process, we have inquired into the nature of the individual’s claimed interest. . . . There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. The natural desire of an individual to be released is indistinguishable from the initial resistance to being confined. But the conviction, with all its procedural safeguards, has extinguished that liberty right: “[G]iven a valid conviction, the criminal defendant has been constitutionally deprived of his liberty.” *Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1979).
- ²² See, e.g., Thomas R. Tyler, “Legitimacy in Corrections.” *Criminology and Public Policy*, 9: 127–134 (2010); Tyler, “Procedural Justice, Legitimacy, and the Effective Rule of Law,” Michael Tonry, ed., Chicago, University of Chicago Press, *Crime and Justice*, 30 (2003).
- ²³ Ruhland, et.al., *supra* note 12.
- ²⁴ On average, parole boards comprise five or six members per state, with even fewer support staff. The number of people considered for release by the average state parole board in 2006 was 8,355—about 35 per working day, and this is only one of a board’s responsibilities. Kinnevy and Caplan, *supra* note 16.
- ²⁵ Studies of release practices have found decision-making times of 3 to 20 minutes per case (Beth Schwartzapfel, “Parole Boards: Problems and Promise,” *Federal Sentencing Reporter*, 28(2): 79-84 (2015).
- ²⁶ Ruhland, et.al. *supra* note 12.
- ²⁷ *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Miller v. Alabama*, 132 S.Ct. 2455 (2012); *Montgomery v. Louisiana*, 136 S.Ct. 758 (2016).
- ²⁸ Sara F. Russell, “Review for Release: Juvenile Offenders, State Parole Practices, and the Eighth Amendment,” *Indiana Law Journal*, 89: 373-440, (2014).
- ²⁹ See Utah Admin. Code R671-303-1 (the parole board is required to provide the inmate with all information used to consider his or her release, and give the inmate an opportunity to respond).
- ³⁰ Edward J. Latessa and Christopher Lowenkamp. “What Works in Reducing Recidivism? The Principles of Effective Intervention.” *University of St. Thomas Law Journal*. 3 (3): 522-523 (2006); Edward J. Latessa, Shelly J. Listwan, and Deborah Koetzle. *What Works (and Doesn’t) in Reducing Recidivism*. Cincinnati, OH: Anderson.
- ³¹ Bonta and Andrews, *supra* note 6. The factors are: history of antisocial behavior; antisocial personality pattern; antisocial cognition; antisocial associates; family/marital; school/work; leisure/recreation; substance abuse.
- ³² Ruhland, et.al. *supra* note 12.
- ³³ Amy Solomon, Jenny W.L. Osborne, Laura Winterfield, Brian Elderbroom, Peggy P. Burke, Richard P. Stroker, Edward E. Rhine, and William D. Burrell. *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes*, Washington, D.C: The Urban Institute, (2008).
- ³⁴ Bonta and Andrews, *supra* note 6.
- ³⁵ Alison Lawrence, and Donna Lyons. “Principles of Effective State Sentencing and Corrections Policy,” National Conference of State Legislators, (2011).
- ³⁶ Solomon, et.al., *supra* note 33.
- ³⁷ Burke, *supra* note 9.
- ³⁸ Nancy M. Campbell, *Comprehensive Framework for Paroling Authorities in an Era of Evidence-Based Practice*, Washington, D.C: U.S. Department of Justice, National Institute of Corrections, (2008).
- ³⁹ Solomon, et.al., *supra* note 33.
- ⁴⁰ American Law Institute, *Model Penal Code: Sentencing*, Proposed Final Draft (April 10, 2017), Philadelphia, PA: American Law Institute.
- ⁴¹ Edward Rhine, Joan Petersilia, and Kevin R. Reitz, “Improving Parole Release in America.” *Federal Sentencing Reporter*. 28 (2): 96-104 (2015); and Rhine, et.al., *supra* note 2.
- ⁴² Ruhland, et. al., *supra* note 12.
- ⁴³ Solomon, et.al., *supra* note 33.
- ⁴⁴ Madeline Carter, *Evidence-Based Policy, Practice and Decision-making: Implications for Paroling Authorities*. Washington, D.C: National Institute of Corrections (2011); Joan Petersilia, *supra* note 15.
- ⁴⁵ Mark W. Lipsey, “The Primary Factors That Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview,” *Victims and Offenders*, 4 (2009): 124-147. Nana A. Andenberger, and M.ark W. Lipsey, “The Positive Effects of Cognitive-behavioral Programs for Offenders: A Meta-analysis of Factors Associated with Effective Treatment,” *Journal of Experimental Criminology*, 1 (2005): 451-476.
- ⁴⁶ Mario A. Pappozzi, and Joel M. Caplan, “A Profile of Paroling Authorities in America: The Strange Bedfellows of Politics and Professionalism,” *Prison Journal*, 89 (4): 401–25 (2009); Lampert, Alexandra, and Robert Weisberg, “Discretionary Parole Release in the United States,” Unpublished manuscript, Palo Alto, CA: Stanford University Law School (2010); Ruhland et. al., *supra* note 12.
- ⁴⁷ Ruhland, et. al., *supra* note 12.
- ⁴⁸ Rhine, et.al, *supra* note 2. Two states (Hawaii and Utah) draw from a special panel composed of a diverse membership. In Utah the panel nominations come from the state’s Commission on Criminal and Juvenile Justice. In Hawaii, the panel consists of representatives from the chief justice of the state’s Supreme Court, the director of corrections, the president of the Hawaii Criminal Justice Association, the president of the bar association of Hawaii, a representative designated by the head of the Interfaith Alliance Hawaii, a member of the general public, and the president of the Hawaii chapter of the National Association of Social Workers.

- ⁴⁹ Such episodes have occurred in Pennsylvania, Massachusetts, Connecticut, and Colorado. In Massachusetts in December 2010, for example, following the killing of a police officer by a person on parole with a violent criminal past who had been released despite receiving a life sentence, the chairperson, board members who voted on his release, and the executive director resigned after an inquiry was ordered by the governor (Kevin Reitz, “The ‘Traditional’ Indeterminate Sentencing Model,” in *The Oxford Handbook of Sentencing and Corrections*, Joan Petersilia and Kevin Reitz eds, New York: Oxford University Press (2012); Todd Clear and Natasha Frost, *The Punishment Imperative: The Rise and Fall of Mass Incarceration in America*, New York: New York University Press, (2014).
- ⁵⁰ Peggy Burke and Michael Tonry, *Successful Transition and Reentry for Safer Communities: A Call to Action for Parole*, Silver Springs, MD: Center for Effective Public Policy (2006). Fairly dramatic departures are sometimes made in the opposite direction. Texas has increased its parole release approval rate. During the past six to seven years the rate of parole board release approvals in the state moved upward (Tony Fabelo, “Texas Justice Reinvestment: Be More Like Texas?” *Justice Research and Policy* 12(1): 113-31, (2010). Likewise, from 2007 to 2014, California, a determinate sentencing state, went from 119 parole releases of people serving life sentences to 902 (Personal correspondence, Jennifer Shaffer, chair, California Board of Parole Hearings, in Rhine, et.al. *supra* note 2).
- ⁵¹ Burkes, et.al., *supra* note 19.
- ⁵² National Commission on Law Observance and Enforcement, in *Penal Institutions, Probation, and Parole*. Washington, DC: US Government Printing Office (1931); Rhine, Edward E., William R. Smith, Ronald R. Jackson, Peggy B. Burke, and Roger Labelle, *Paroling Authorities: Recent History and Current Practice*. Laurel, MD: American Correctional Association (1991); Kevin Reitz, *supra* note 49.
- ⁵³ Ruhland, et. al. *supra* note 12.
- ⁵⁴ Schwartzapfel, Beth, “Life without Parole: Inside the Secretive World of Parole Boards, Where Your Freedom May Depend on Politics and Whim.” *Marshall Project* (July 10, 2015); Pappozzi and Caplan, *supra* note 46. The latter found that only eight states required a bachelor’s degree for appointment to the board. Twenty-three required some work experience, though only 15 mandated that such experience be tied to the criminal justice system or other relevant social services.
- ⁵⁵ Richard Stroker, Peggy B. Burke, and Leilah Gilligan, *Core Competencies: Resources for Parole Board Chairs, Members, and Executive Staff*. Washington, D.C: National Institute of Corrections (2011).
- ⁵⁶ Stefan Bing, “Reconsidering State Parole Board Membership Requirements in Light of the Model Penal Code,” *Kentucky Law Journal* 100: 871-93 (2012).
- ⁵⁷ Though the criticisms pertaining to the statutory requirements for appointments to the parole board are not unfounded, nationwide board members and chairs possess extensive educational credentials and experience in the field of criminal justice. Jason Robey and Edward Rhine. “Parole Board Members: Statutory Requirements, Educational Achievements, and Institutional Structure.” March 1, 2017. <http://robinainstitute.umn.edu/news-views/parole-board-members-statutory-requirements-educational-achievements-and-institutional>). The Robina survey, *supra* note 2, did not ask about the educational or criminal justice backgrounds of hearing officers or hearing examiners.
- ⁵⁸ Richard Stroker, *Paroling Authorities’ Strategic Planning and Management for Results*, Washington, D.C: National Institute of Corrections (2011).
- ⁵⁹ National Institute of Corrections, *Transition from Prison to the Community Model (TPC)*. Washington, D.C: The Center for Effective Public Policy and Abt Associates (2009). Burke, *supra* note 9.
- ⁶⁰ Ruhland, et. al. *supra* note 12. It is significant as well that nearly half of the releasing authority chairs agreed or strongly agreed that their agencies should act independently of the Department of Corrections when establishing release policies and practices.
- ⁶¹ National Parole Resource Center, *supra* note 8.
- ⁶² A list of valuable parole specific “dashboard” indicators, or data metrics is provided in Richard Stroker, “Paroling Authorities Strategic Planning and Management for Results, Washington, D.C: National Institute of Corrections, (2011).
- ⁶³ Peggy B. Burke, *The Future of Parole as a Key Partner in Assuring Public Safety*. Washington, D.C: National Institute of Corrections (2011).
- ⁶⁴ James Doyle, “Wrongful Convictions and Other Sentinel Events: Learning from Organizational Accidents in the Criminal Justice System,” *Sentinel Events Initiative: Proceedings from an Expert Roundtable*, Washington, D.C: National Institute of Justice, U.S. Department of Justice (May 21-23, 2013).



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